

overcome when it is shewn that the giving of the mortgage or other security was not the mere voluntary act of the debtor.

The law in this respect is illustrated by the cases of *McCrae v. White*, 9 S. C. R. 22; *Long v. Hancock*, 12 S. C. R. 532; *Molsons Bank v. Halter*, 18 S. C. R. 88; and *Kirby v. Rathbun Co.*, 22 O. R. 9. Decisions since the amendments to the Ontario Assignments and Preferences Act must be read in view of the difference in the enactments. See *Webster v. Crickmore*, 25 A. R. 464.

The learned trial Judge was of opinion, upon the evidence, that the defendants had sufficiently discharged the onus of rebutting the presumption of intent to defraud. This conclusion is greatly strengthened by the further evidence. The result of the whole testimony is that the mortgage was the outcome of repeated demands made upon the company by the defendants—who were dissatisfied with the state of the account—accompanied on more than one occasion by a threat of proceedings which were held in abeyance in consequence of the promise on behalf of the company that a mortgage would be given. . . .

The attack upon the mortgage fails, and the appeal should be allowed and the action dismissed, but the circumstances were such as to invite inquiry, and we may properly say that it is not a case in which any of the costs of the litigation should be awarded to either party.

The other members of the Court concurred; MEREDITH, J.A., to give reasons later.

OCTOBER 13TH, 1910.

*BARNETT v. GRAND TRUNK R. W. CO.

Railway—Collision—Injury to Person on Train—Licensee or Trespasser—Negligence—Findings of Jury—Plaintiff not a Trespasser as against Railway Company Responsible for Collision.

Appeal by the defendants from the judgment of a Divisional Court, 20 O. L. R. 390, 1 O. W. N. 491, setting aside the judgment for the defendants entered by MEREDITH, C.J.C.P., upon the findings of the jury, and directing judgment to be entered for the plaintiff for the damages assessed by the jury, acting upon a consent, given by the parties at the trial, to the Court determining any point necessary for the determination of the right of the parties not covered by the questions submitted.

* This case will be reported in the Ontario Law Reports.